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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,099	01/04/2001	Richard E. Vogel	70254-328	8152

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EXAMINER

MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

17

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/681,099

Applicant(s)

VOGEL ET AL.

Examiner

Joseph C. Merek

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32, 34-38, 42, 43, 45, 46, 52 and 62-81 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 62-80 is/are allowed.
- 6) ☒ Claim(s) 1-17, 19-30, 32, 34-38, 42, 43, 45, 46, 52 and 81 is/are rejected.
- 7) ☒ Claim(s) 18 and 31 is/are objected to.
- 8) ☒ Claim(s) 1-32, 34-38, 42, 43, 45, 46, 52 and 62-81 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The petition filed 11/06/03 has been treated as a request for reconsideration.

The final action dated 7/03/02 is hereby withdrawn and prosecution is reopened.

See below where a new ground of rejection is set forth below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 43-46 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Egger (US 2,617,549). Regarding claims 52, see Fig. 6, where 18 on the inner surface of the sleeve is the frictional material. Regarding claim 45, see Fig. The material polypropylene from which the sleeve is made is frictional. Regarding claim 43, see Figs. 1, 2, and 6, where the sleeve 13 is tapered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43, 45, 46, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wemyss (US 6,305,656) in view of Weins (US 4,870,837).

Regarding claim 52, as seen in Figs. 3, 4, and 19, Wemyss teaches a cup holder with ribs on the inner surface of the sleeve to hold the cup but does not teach the ribs are a piece of frictional material. Weins, as seen in Fig. 3 and Col. 5, lines 20 and 21, teaches a similar structure where the ribs are made from a rubberized material secured to the inner surface of the sleeve. It would have been obvious to employ the material of Weins in the ribs of Wemyss to provide a softer or more flexible rib. Regarding claim 43, see Figs. 3, 4, and 19 where the sleeve tapers. Regarding claims 45 and 46, the frictional material (ribs) are adjacent the upper edge and rubberized as modified by Weins.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wemyss in view of Weins as applied to claim 52 above, and further in view of Fitzgerald et al (US 4,747,507). Regarding claim 42, the modified sleeve of Wemyss does not teach the at least one hole in the bottom. Fitzgerald et al teaches a similar structure where there is at least one hole (9) in the bottom. It would have been obvious to employ the hole of Fitzgerald et al in the modified sleeve of Wemyss to allow for drainage as taught by Fitzgerald et al.

Claim 81 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wemyss (US 6,305,656) in view of Weins (US 4,870,837) and further in view of Fitzgerald et al (US 4,747,507). Regarding claim 81 as seen in Fig. 19, Wemyss teaches a cup holder with ribs on the inner surface of the sleeve to hold the cup but does not teach the ribs

are a piece of frictional material. Weins, as seen in Fig. 3 and Col. 5, lines 20 and 21, teaches a similar structure where the ribs are made from a rubberized material secured to the inner surface of the sleeve. It would have been obvious to employ the material of Weins in the ribs of Wemyss to provide a softer or more flexible rib. The modified sleeve of Wemyss does not teach the at least one hole in the bottom. Fitzgerald et al teaches a similar structure where there is at least one hole (9) in the bottom. It would have been obvious to employ the hole of Fitzgerald et al in the modified sleeve of Wemyss to allow for drainage as taught by Fitzgerald et al.

Claims 1-12, 19-29, and 32, and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of FR 1,437,341. Regarding claims 1, 19, and 32, Marsters et al does not teach the collar. FR '341, as seen in the Figs 1 and 2, teaches a collar for a cup. It would have been obvious to employ the collar of FR '341 in the cup of Marsters et al so that the cup could be used by infants. The collar will cause the cup to be retained between the collar and the sleeve. Regarding claims 8 and 25, see Fig.2 of FR '341 where the shoulder is shown that limits the insertion of the collar. Regarding claims 9-12, 26-29, and 34-37, the inner surface of the parts are the enhancer. The material is frictional. Regarding claim 13, official notice is taken that it is well known to add rubber gaskets to parts that are to be mated. It would have been obvious to provide a gasket between the parts to provide a liquid tight joint.

Claims 14-16, 30, 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of FR '341 as applied to claim 11 above, and further in view of Smith et al. The modified container of Marsters et al does not teach the protrusion on

the insert portion of the collar. Smith et al teaches a collar for inserting into a container with a protrusion on the insert portion. It would have been obvious to employ the rib of Smith et al in the modified container of Marsters et al to provide a liquid tight seal as taught by Smith et al. Regarding claims 15 and 16, the protrusion is an annular rib and an embossment.

Claim 17 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of FR '341 and Smith et al as applied to claim 14 above, and further in view of Fitzgerald et al. Regarding claim 17, as it is best understood, the modified container of Marsters et al does not teach the longitudinal rib on the inner surface of the sleeve (the insert portion in on the collar). Fitzgerald et al teaches a holder or sleeve with ribs on the inner surface for holding the inner container. It would have been obvious to employ the ribs of Fitzgerald et al in the modified container of Marsters et al to better retain the cup in the sleeve

Claims 1-7, 9-13, 19-24, 26-29, 32, 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of Schmiedeknecht (GB 20, 635).

Regarding claims 1, 20, and 32, Marsters et al does not teach the collar.

Schmiedeknecht as seen in the Fig., teaches a collar for a cup. It would have been obvious to employ the collar of Schmiedeknecht in the cup of Marsters et al to provide a hygienic drinking surface. The collar will cause the cup to be retained between the collar and the sleeve. Regarding claims 9-12, 26-29, and 34-37, the inner surface of the parts are the enhancer. The material is frictional. Regarding claim 13, official notice is

taken that it is well known to add rubber gaskets to parts that are to be mated. It would have been obvious to provide a gasket between the parts to provide a liquid tight joint.

Claims 14-16, 30, 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of Schmiedeknecht (GB 20, 635) as applied to claim 11 above, and further in view of Smith et al. The modified container of Marsters et al does not teach the protrusion on the insert portion of the collar. Smith et al teaches a collar for inserting into a container with a protrusion on the insert portion. It would have been obvious to employ the rib of Smith et al in the modified container of Marsters et al to provide a liquid tight seal as taught by Smith et al. Regarding claims 15 and 16, the protrusion is an annular rib and an embossment.

Claim 17 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marsters et al in view of Schmiedeknecht (GB 20, 635) and Smith et al as applied to claim 14 above, and further in view of Fitzgerald et al. Regarding claim 17, as it is best understood, the modified container of Marsters et al does not teach the longitudinal rib on the inner surface of the sleeve (the insert portion in on the collar). Fitzgerald et al teaches a holder or sleeve with ribs on the inner surface for holding the inner container. It would have been obvious to employ the ribs of Fitzgerald et al in the modified container of Marsters et al to better retain the cup in the sleeve.

Allowable Subject Matter

Claims 62-80 have been allowed.

Claims 18 and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. DeBuys is cited for teaching a sleeve with longitudinal slots.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

1148.



JCM

December 15, 2003